Supreme Court, U.S.
FILED
05 1002 FEB 3 - 2006
OFFICE OF THE CLERK

No.

In The

Supreme Court of the United States

Walter M. Shaw,

Petitioner

versus

County of San Diego,

Respondent

On Petition For Writ of Certiorari
To The Court of Appeal of the The State of California
Fourth Appellate District, Division One

PETITION for WRIT OF CERTIORARI

Walter M. Shaw
Petitioner In Propia Persona
4000 Palm Drive
Bonita, California, 91902
{619} 472 -1555

QUESTIONS PRESENTED FOR REVIEW

I. Whether a County Governmental Agency's Requirement of Mandatory Easements for Public Improvements Qualifies as an Appropriative Taking under the Fifth Amendment?

II. Whether, after Appropriating a Private Landowner's Right of Use in His Property and Assigning That Right to the Public at Large, a County Governmental Agency must Compensate the Private Landowner for That Taking?

III. Whether a County Governmental Agency's Use of a Fraudulent Map as the Primary Means by Which That Agency Circumvented Their Legal Responsibility to Exercise Available Eminent Domain Proceedings over Private Property Violates Constitutional Law?

IV. Whether a Statute of Limitations Defense Accepted by the State Court Survives Federal Common Law Analysis When the Delay Was Induced by Fraudulent Concealment?

V. Whether a Statute of Limitations Defense Accepted by the State Court Should Be Invalidated When the Requirements for the Federal Discovery Rule Are Met?

VI. Whether this Court, in Foregoing a Federal Statute of Limitations Analysis, Is Empowered to Apply Applicable State Law on Delayed Accrual ?

VII. Whether the Actions of a County Governmental Agency in Violating the Constitutional Rights of a Private Property Owner Are to Be Imputed to the State in Accordance with the Principles of Agency Law?

VIII. Whether the Precepts of Procedural Due Process under the Fourteenth Amendment Are Violated in Instances of Peremptory Grants of Summary Judgment by a State Court?

TABLE OF CONTENTS

QUESTIONS PRESENTED i

TABLE OF CONTENTS iii

TABLE OF AUTHORITIES iv

OPINIONS BELOW viii

JURISDICTION viii

CONSTITUTIONAL PROVISIONS INVOLVED ix

STATEMENT OF THE CASE 1

REASONS FOR GRANTING THE PETITION..... 5

CONCLUSION 30

INDEX TO APPENDICES

APPENDIX A	Grant of Extension of Time to File Petition
APPENDIX B	Decision of State Court of Appeals
APPENDIX C	Decision of State Trial Court
APPENDIX D	Decision of State Supreme Court Denying Review
APPENDIX E	Petition for Review, State Supreme Court
APPENDIX F	Petition for Rehearing, State Appellate Court

TABLE OF AUTHORITIES

CASES

Agins v. City of Tiburon, 447 U.S. 255 (1980). ..... passim

Armstrong v. United States, 364 U.S. 40 (1959). 14

Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71 (1988)..... 5

Bedford v. Raytheon Co., 755 F. Supp. 469 (1991). 26

Berman v. Parker, 348 U.S. 26 (1954). 13, 14

Bradley v. Fallbrook Irrigation, 164 U.S.112 (1896)... 13

Cathcart v. Keene Industrial Insulation, 471 A.2d 493(1984). 21

Chicago, Burlington, and Quincy Railroad v. Chicago, 166 U.S. 226, 241 (1897). 13

City of Newark v. New Jersey, 262 U.S. 192 (1923)... 25

City of Trenton v. New Jersey 262 U.S. 182 (1923)... 25

Continental Potash, Inc. v. Freeport-McMoran, Inc., 858 P.2d 66 (1993). 18

Dolan v. City of Tigard, 512 U.S. 374 (1994). 11

Dyer v. Texas Electric Service, 680 S.W.2d 883 (1985). 16

Eastern Enterprises v. Apfel, 118 S.Ct 2131 (1998).... 14

First Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304 (1987). 10

Harmon v. Phillips Petroleum Company, 555 F. Supp. 447 (1982). 16

Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984). 16

Holmberg v. Armbrecht, 327 U.S. 392 (1946)..... 20

Hunter v. City of Pittsburgh, 207 U.S. 161 (1907). 24

Israelsky v. Title Insurance Company of Minnesota, 212 Cal.App.3d 611 (1989) 22

J.E.D. v California Coastal Commission, 483 U.S. 825 (1987). 10

Kohler v. Woollen, Brown & Hawkins, 304 N.E. 2d 677 (1973). 21

Lambert v. Commonwealth Land Title Insurance Company, 53 Cal.3d 1072 (1991). 22

Lucas v. South Carolina Coast al, 120 C. Ed 2d 798 (1992). 8, 9

Monongahela Navigation v United States, 148 U.S. 312 (1893). 16

Nasierowski Bros. Inv. Co. v. City of Sterling Heights, 949 F.2d 890 (1991). 28

Nollan v. California Coastal Commission, 483 U.S. 825 (1987)..... 9, 10

O'Brien v. Eli Lilly & Co., 668 F. 2d 704 (1981). 21

Order of R.R. Telegraphers v. Railway Express Agency, 321 U.S. 342 (1944). 17

Palazzolo v. Rhode Island, 533 U.S.606, 616 (2001).... 6

Panhandle Eastern Pipe Line Company v. State Highway Commission, 294 U.S. 613 (1935)..... 14

Pennsylvania Central Transportation Company v. New York City, 438 U.S. 104 (1978). 7, 14

Pennsylvania Coal v. Mahon, 260 U.S. 393 (1922). ... 6

Plat v. San Francisco,158 Cal. 74 (1910). 26

Reynolds v. Sims, 377 U.S. 533, 575 (1964). 24

Roberts v. New York City, 295 U.S. 264 (1935). 16

Rudee Inlet Authority v. Bastian, 206 Va 906 (1966)... 15

Saliter v. Pierce Brothers Mortuaries, 81 Cal.App3d 292 (1978). 22

Stevens v. City of Cannon Beach, 510 U.S.1207 (1994)..... 6

Sun Oil Co. v. Wortman, 486 U.S. 717 (1988). 18

Thorton Development Authority v. Upah, 640 F. Supp. 1071 (1986). 15

TVA v. Powelson, 319 U.S. 266, 281 (1943). 16

United States v. Hanter [illegible] F. Supp. 188 (1980). 7

United States v. Kubrick, 444 U.S. 111 (1979). 21

United States v. Lanza, 260 U.S. 377, 382 (1922). 23

United States v. Lynhah, 188 U.S. 445 (1903). 7

United States v. Miller, 317 U.S. 369 (1943). 17

United States v. Twin Power Company,
350 U.S. 222 (1956)..... 15

United States v. Welch, 217 U.S. 333 (1910). 16

United States v. Wheeler, 435 U.S. 313 (1978). 23, 24

West Coast Advertising Co. v. San Francisco,
14 Cal. 2d 516, (1939). 25

Williams v. Eggleston, 170 U.S. 304 (1898). 26

Williams v. Mayor of Baltimore, 289 U.S. 36 (1933)... 25

Wilton v. St. Johns County, 98 Fla 26 (1928). 12

Wood v. Carpenter, 101 U.S. 135 (1879). 18

Yee v. City of Escondido, 503 U.S.519,534 (1992)..... 5

STATUTES AND RULES

U.S. CONST., amend. V. ..... passim

U.S. CONST., amend. XIV, § 1. ..... passim

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the Court of Appeals for the State of California, Fourth Appellate District, Division One, the highest state court to review the merits appears at Appendix A to the petition and is unpublished.

JURISDICTION

The date on which the Court of Appeals for the State of California, Fourth Appellate District, Division One, the highest state court decided my case was 15 July 2005. A copy of that decision appears at Appendix A.

A timely petition for review in the Supreme Court of the State of California was thereafter denied on 12 October 2005, and a copy of the order denying review appears at Appendix C.

The jurisdiction of this Court is invoked under 28 U.S.C. §1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

U.S. CONST., amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. CONST., amend. XIV, § 1.

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Facts

This case is about a failure to disclose important facts to a private landowner regarding state law which would have benefitted that private landowner . The Respondent, County of San Diego (Hereinafter, "RESPONDENT") circumvented their duties attendant to offsite public improvements related to a 333 housing subdivision and failed to comply with the constitutional law on eminent domain. This case is about Crown Hills Subdivision TM4456 requiring offsite public improvements from somewhere. This case is about a fraudulent map used to deceive and meant to be a means of circumvention of state law. The County had used the fraudulent map of 1985 which claimed a sewer existed across Petitioner Walter S. Shaw's (Hereinafter, "PETITIONER") property to circumvent constitutional principles of eminent domain. Thus, this case is about the deception and concealment of facts to a landowner to induce him to alter his position of risk and the necessary liability for the damages that result.

The heart of the case lies in the initial stages of the development of Crown Hills, a neighboring property to the Petitioners. The Environmental Impact Report for Crown Hills made clear the task at hand: construct a proper sewer system for the 333 unit development. The initial problem described in that EIR was to bring the closest existing public sewer over 1000 feet north beneath Interstate 8 to the boundary of the subdivision. The initial site was east of Tavern Road Bridge. The Subdivision planned this as a route to bridge the "gap". This was the route originally submitted for EIR approval. This route was never used for unknown reasons. However, by this route a large portion of the 333 housing unit sewer drainage would require service by a pump. This extension of the public sewer line under I-8 to the Crown Hills subdivision never occurred as described above. Instead they changed their plans and by a fraudulent map were able to circumvent the proper practice of executing eminent domain proceedings over Petitioner's property.

About two years after the above project started, Petitioner

began to create a site preparation plan for the purpose of marketing Petitioner's property. Prior to approval of that site preparation plan, the County required the establishment of certain public easements through Petitioner's property. These public easements were mandatory before site preparation plan approval and were executed in 1986. These easements were clearly dated 1986. The fraudulent map showing the pre-existing sewer was clearly dated 1985. This pre-existing sewer neither existed in 1985 nor in 1987 when subdivision map was approved. Easements for storm drain and sanitation sewer consisting of a unit easement of 40 feet wide by 600 feet long were required by the County Public Works before site preparation plan approval. Petitioner was forced to grant these easements for public improvements prior to the approval of his site preparation plan.

This case is also about CalTrans requiring that the improvements across Dr. Shaw's property be public. The requirements of CalTrans in exchange for encroachment on a state right of way for the off-site public improvement was that the improvements be public, owned and maintained by the respective sanitation district. Petitioner's site preparation plans were appr ed in 1986 including grant of easements through the center of Petitioner's property: 40' by 600' for public storm drain and sewer. No compliance with these CalTrans requirements has been made to date.

The subdivision and the Respondent created a fraudulent map in 1985 to circumvent the Subdivision Map Act. They did this in order to obliterate their requirements to create or secure proper offsite public improvements for the subdivision. This fraudulent map was submitted representing a pre-existing sewer and constituted their means of solving the problem of bridging the gap between the closest existing public sewer south of Interstate 8 and the subdivision. This map represented that they would connect to an "existing sewer line" on Petitioner's property that plainly did not exist. Petitioner was neither notified of this change nor made aware of the fraudulently drawn sewer across his property until his own discovery in 2001.